

MINUTES
TENNESSEE BOARD OF MEDICAL EXAMINERS
MARCH 16 AND 17, 2004

The meeting was called to order at 8:50 a.m. in the Cumberland Room, Ground Floor of the Cordell Hull Building, 425 5th Avenue North, Nashville, Tennessee 37247-1010, by President Dr. David Cunningham. Other members present were: Drs. Robert Ripley, Charles White, Mitchell Mutter, Travis Bolton, Sam Barnes, Barbara Engelhardt, George Eckles, and Ms. Mary Johnson. Absent members were Dr. Allen Edmonson, Mr. Mark Brown and Ms. Nina Yeiser. Staff present included: Rosemarie Otto, Executive Director, Marsha Arnold, Unit Manager, Sandra Powell, Administrator, Dr. Larry Arnold, Board Consultant, and Robert Kraemer, Advisory Attorney.

Minutes

Minutes from the January 20 and 21, 2004 and February 12, 2004 Teleconference meetings were reviewed. Dr. White made a motion to approve the minutes and the motion was seconded by Dr. Mutter. The motion carried unopposed.

Ratification of Licenses

New, reinstated, failed to renew and voluntarily retired licenses for Medical Doctors, Medical X-Ray Operators and Athletic Trainers was reviewed by the Board. Dr. White made a motion to ratify the approvals and the motion was seconded by Ms. Johnson. Dr. Mutter made a motion to ratify the approval of licenses by the Acupuncture Committee and Dr. Engelhardt seconded the motion. Dr. Barnes made a motion to ratify the approval of licenses by the Clinical Perfusionists and Dr. White seconded the motion.

New Applicant Interviews

Michael Joseph Parks, MD

Dr. Parks is applying for a license to practice in Tennessee. Dr. Arnold reviewed Dr. Park's application file for the Board. Dr. Parks has medical licenses in several states several of which have been disciplined. Mr. Kraemer suggested Dr. Parks obtain verification of his Post Graduate training from the Program Director since Mt. Sinai Hospital is no longer in existence. Also Dr. Parks still has an encumbered license in the state of Michigan. After further discussion, Dr. White made a motion to deny licensure until his license in Michigan is unencumbered and verification of Dr. Parks' post graduate training from the program director has been verified. Dr. Bolton seconded the motion. The motion carried unopposed.

Arvinder J. Sachdev, MD

Dr. Sachdev is applying for a license to practice medicine in Tennessee. Dr. Arnold reviewed the application file for the Board. The Board asked Dr. Sachdev questions about previous actions in New York. After further discussions, Dr. Barnes made a motion to grant a license to Dr. Sachdev. Ms. Johnson seconded the motion. The motion carried unopposed.

James Matthew Whitley, MD

Dr. Whitley is applying for a license to practice in Tennessee. Dr. Arnold reviewed Dr. Whitley's file for the Board. The Board asked Dr. Whitley questions pertaining to a malpractice judgment. After further discussions, Dr. Mutter made a motion to grant a license to Dr. Whitley. Dr. Engelhardt seconded the motion. The motion carried unopposed.

Maged Z. Youssef, MD

Dr. Youssef is applying for a license to practice medicine in Tennessee. Dr. Youssef falsified records stating he was Board Certified in Pediatrics. Actions were taken in New York, New Jersey and North Carolina against his license. Dr. Engelhardt recused herself from the discussion and the vote. After discussions, the Board's decision was for Dr. Youssef to obtain an unencumbered license in the other states, take an ethics course and submit letters of recommendation to Dr. Arnold for review. Dr. Bolton made a motion to defer Dr. Youssef's application to the May meeting. Dr. White seconded the motion. The motion carried unopposed.

William K. Barr, MD, John Michael Whitley, MD, and Bruce Ziran, MD

Drs. Barr, Whitley and Ziran were not present for the scheduled interview. Dr. White made a motion to defer them to the next meeting. If there has been no word from them, they will be denied a license at that time. Dr. Eckles seconded the motion. The motion carried unopposed.

Reinstatement Interviews**Juancho C. Bautista, MD**

Dr. Bautista is applying for reinstatement of his Tennessee medical license. Dr. Mutter recused himself from the discussion and the vote. Dr. Bautista's license was on probation at the time it went into failed to renew status. Dr. White made a motion for Dr. Bautista to complete forty (40) hours of continuing medical education, successfully pass the SPEX exam and reappear before the Board before reinstatement could be awarded. Then his reinstated license would be on probation until such time as he seeks an order modification. Dr. Engelhardt seconded the motion. The motion carried unopposed.

Thomas D. Starkey, MD

Dr. Starkey is applying for reinstatement of his Tennessee medical license. Dr. Starkey responded to the questions the Board asked about anger management. After further discussions, Dr. Mutter made a motion to grant the license on the condition that Dr. Starkey seek advocacy with the Tennessee Medical Foundation and successfully complete a course in anger management prior to getting his license reinstated. Dr. Barnes seconded the motion. The motion carried unopposed.

Rule Action

Jerry Kosten reviewed the Departmental filing of Notice of Rulemaking Hearing held December 23, 2003 for the Committee on Clinical Perfusionists regarding disciplinary proceedings. Dr. Eckles made a motion to ratify the rules as amended. Dr. White seconded the motion. A roll call vote was conducted by Ms. Otto. The motion carried unopposed.

Ms. Otto informed the Board that Ms. Robbie Bell wanted to discuss the parameters of the seven (7) year rule. Mr. Jerry Taylor with the Nashville Bar and Dr. Daniel Byrne were present to address the Board about the hardships and problems faced with the 7 year rule. Mr. Taylor explained the hardships Dr. Byrne has encountered trying to obtain a license. Dr. Byrne's exam dates were outside the 7 year rule. Mr. Kraemer stated it would be inappropriate for Dr. Byrne to give details of his situation today. Mr. Taylor requested the Board to look for placing wording in the rule allowing authority for the Board to grant waivers. Dr. Cunningham asked the Board's input on the subject. Dr. Ripley's suggestion was to look for ways to craft the language to create very narrow exceptions to the rule such as for military service. Drs. White, Mutter, Barnes, Engelhardt, Eckles and Ms. Johnson agreed. Dr. Bolton did not vote. Dr. Cunningham requested Mr. Kraemer to craft such a rule reflecting the Board's ideas. Mr. Kraemer asked Mr. Taylor if he would submit wording. The Board took no action on the seven year rule.

The Board reviewed and discussed the Tennessee Medical Association's proposed amendment to the medical records retention rule. Dr. Eckles made a motion to send the amended rule to a rulemaking hearing. Dr. Mutter seconded the motion. The motion carried unopposed.

Mr. Kosten reported on the Office Based Surgery rules. Mr. Kraemer handed out the latest draft of the changes in the document to the Board.

Mr. Bill Hubbard with the Tennessee Hospital Association, asked for another rulemaking hearing. Mr. Hubbard suggested an opportunity to have more public input and stated the rule has changed considerably since it was first presented. Mr. Kraemer supported the suggestion. Dr. Mutter made a motion to send the new rule to rulemaking hearing and hear testimony for the Level II accreditation. Ms. Johnson seconded the motion. The motion failed. Dr. Cunningham stated the discussion on the Office Based Surgery Rule would need to be continued at a later date. The Board's decision was to schedule a meeting on April 1, 2004 to specifically discuss the Office Based Surgery Rule and finalize the Rule that day.

Ms. Otto informed the Board that Ms. Judy Eads and Ms. Robbie Bell will present a report for discussion and review at the next meeting suggesting changes to the Guidelines for Disciplinary Actions.

Ms. Otto informed the Board that letters were sent out to the x-ray course providers informing them of being removed from the approval list. Dr. White made a motion to ratify the removal of course providers of limited x-ray courses from the approval list. Dr. Barnes seconded the motion. The motion carried unopposed. The list of approved course providers will be attached to these minutes as well as placed on the Internet.

Appearances

Several people were present for the discussion on issuance of a private advisory ruling regarding non-pathologist billing for pathology services. Mr. John Lyle was present and representing Dr. Ed McDonald, Director of Laboratories at St. Thomas Hospital. Mr. Lyle informed the Board that he supports Mr. Kraemer's opinion. Mr. Yarnell Beatty, General Counsel for the Tennessee Medical Association presented his views to the Board and explained that TMA will support whatever the Board decides. Mr. Michael Hess, an attorney in Nashville who works primarily in the healthcare area addressed the Board and expressed his views concerning the proposed advisory opinion. Dr. Cunningham asked Mr. Kraemer to review the conclusions of the client billing advisory ruling. Ms. Johnson asked what percentage would constitute an appropriate amount for an acquisition or processing charges added to a bill. There was a discussion of what "reasonable" would mean. Mr. Brown asked for clarification of the "acquisition or processing charge". Betty Anderson, attorney and lobbyist stated the Legislature was interested in any ideas or decisions of the Medical Board on the issue. The Board members discussed problems with finding a percentage. Mr. Brown suggested deleting the last sentence of #2 on page 9 of the advisory ruling that addresses the percentage fee. After further discussions, Dr. White made a motion to accept the ruling as amended. Dr. Mutter seconded the motion. The motion carried unopposed.

Reports

Budget Report

Ms. Otto informed the Board that Ms. Lisa Tittle will be at the next scheduled meeting to present the Board with the projected figures for the next fiscal year.

Director's Report

Ms. Otto informed the Board this would be the last meeting for Dr. Bolton. Ms. Otto reported on the Controlled Substance Database Advisory Committee with Dr. Eckles assistance.

Investigative Report

Ms. Denise Moran, Director for Investigations, reviewed the report from the Bureau of Investigation for January and February. Ms. Moran informed the Board of the week long training session the Investigators had attended and felt the new tools would be helpful for future investigations.

Disciplinary Report

Ms. Lea Phelps, Disciplinary Coordinator, reviewed the disciplinary report for the Board. Ms. Phelps reported the fees for civil penalties are being collected.

Office of General Counsel Report

Mr. Bob Kraemer, the Medical Board's Advisory Attorney gave his report to the Board. Mr. Kraemer reported the status of rules that are being worked at this time. He reported 104 open complaints against sixty-one (61) individual physicians.

Dr. Engelhardt made a motion to accept all reports. Dr. Eckles seconded the motion.

“Noteworthy” section for the Internet

The Board did not designate anything for the “Noteworthy” section of the Internet.

Adjourned for lunch at 12 noon and reconvened in the Cumberland Room at 1:00 p.m.

Disciplinary Action

Cumberland Room:

Panel: Drs. White, Cunningham, and Ripley

Agreed Order

Ray W. Mettatal, MD- Dr. Mettatal was present and represented by legal counsel, Mr. Frank Scanlon. Mr. Robert O'Connell represented the State. Mr. O'Connell handed out the Notice of Charges and Agreed Order to the panel for review. Dr. Mettatal's Tennessee license has been in a retired status since January 3, 1994. On July 28, 2003, the Virginia Board of Medicine issued an Order which became final on September 1, 2003, placing him on indefinite probation and prohibiting him from practicing medicine until he complied with certain conditions relating primarily to obtaining psychotherapy and passing the SPEX exam. Dr. Mettatal was guilty of unprofessional conduct and suffered from a “mental or physical incapacity or incompetence to practice the profession with safety to the patients and the public.” The Agreed Order states that Dr. Mettatal's license is placed on suspension until such time as his right to practice medicine in the State of Virginia has been restored by the Virginia Board of Medicine. Upon the restoration of his right to practice medicine in the State of Virginia, Dr. Mettatal must file a petition for Order Modification, requesting that the suspension of his license in the State of Tennessee be lifted by the Tennessee Board of Medical Examiners. Dr. White made a motion to accept the Agreed Order as written. Dr. Ripley seconded the motion. The motion passed unopposed.

Contested Case Hearing

Robert Burkich, MD- Dr. Burkich was present and represented by legal counsel, Mr. Tommy Burnett. Mr. Robert O'Connell represented the State. The Honorable Robert Fellman, Administrative Law Judge presided. Opening statements began with Mr. Burnett taking the floor. Mr. O'Connell reviewed the out of state action brought against Dr. Burkich's license from the state of Georgia. His license was revoked due to mail fraud. Mr. O'Connell handed out the Notice of Charges, Respondent's Response to Request for Admissions and Georgia's Final Decision to the panel for review. After further discussions, both attorneys gave their closing arguments. Mr. O'Connell expressed to the panel that Dr. Burkich was convicted of mail fraud and Georgia disciplined his license based on that conviction. Mr. O'Connell stated that the Tennessee Board should take appropriate action to revoke Dr. Burkich's Tennessee license. Mr. Burnette asked the panel not to revoke Dr. Burkich's medical license. After closing arguments, Judge Fellman turned the hearing over to the Chairperson. Mr. O'Connell handed out the Final Order to the panel for review. Dr. White made a motion to reopen the hearing for questions. Dr. Ripley seconded the motion. Dr. Burkich was called for questioning. The panel asked several questions relating the mail fraud. Dr. Burkich stated the fraud did not relate to patients or any medical part thereof. After further discussions, the panel reviewed the Conclusion of Law. Dr. Cunningham stated there needs to be disciplinary actions taken. Dr. White made a motion to add 63-6-214(b) (10) stating, "The grounds upon which the board shall exercise such power include...Conviction of a felony, conviction of any offense under state or federal drug laws, or conviction of any offense involving moral turpitude." Dr. Ripley seconded the motion. The motion carried unopposed. Dr. Ripley made a motion to revoke Dr. Burkich's license for one year commensurate with the actions taken by the state of Georgia. Dr. White seconded the motion. The motion carried unopposed. Dr. White made a motion to assess the costs of the hearings and the investigative costs to Dr. Burkich. Dr. Ripley seconded the motion. The motion carried unopposed.

Letter of Reprimand

Elizabeth Mitchell, MDX-Ms. Mitchell does not hold a medical x-ray license in Tennessee. It was alleged by the State that Ms. Mitchell was practicing without a license. She is an applicant. Mr. O'Connell handed out the letter of reprimand to the panel for review. Dr. White made a motion to accept the Letter of Reprimand. Dr. Cunningham seconded the motion. The motion carried unopposed.

Erica Roggie, AT-Ms. Roggie was practicing as an Athletic Trainer without holding a license. Mr. O'Connell handed out the Letter of Reprimand to the panel for review. Dr. White made a motion to accept the Letter of Reprimand. Dr. Ripley seconded the motion. The motion carried.

Eric Dyer, AT-Mr. Dyer was practicing as an Athletic Trainer without a license. Mr. O'Connell handed out the Letter of Reprimand to the panel for review. Dr. Ripley made a motion to accept the Letter of Reprimand. Dr. White seconded the motion. The motion carried unopposed.

Adjourned at 3:00 p.m.

Tennessee Room:

Panel: Drs. Barnes, Engelhardt and Ms. Johnson

Agreed Order

Christopher D. Carswell, MD-Dr. Carswell was not present nor represented by legal counsel. Mr. Jonathan Stephens represented the State. Mr. Stephens handed out the Notice of Charges and Agreed Order to the panel for review. On the 6th day of December, 2002, before the Composite State Board of Medical Examiners, State of Georgia, Dr. Carswell entered into a Public Consent Order wherein his license to practice medicine in that state was placed on probation as a result of a history of opiate abuse and self-prescribing controlled substances. The Agreed Order states that Dr. Carswell's license to practice medicine shall be and is hereby placed on Probation for a period of five (5) years commencing with the effective date of the Agreed Order. Dr. Carswell must submit to the Tennessee Board of Medical Examiners Quarterly Reports from his supervising and/or monitoring physician(s) pursuant to the Public Consent Order, Docket No. 20030049, entered December 6, 2002, by the Composite State Board of Medical Examiners, State of Georgia. Dr. Carswell shall report any violations of said Order of the Composite State Board of Medical Examiners, State of Georgia within a reasonable period of time to the Tennessee Board of Medical Examiners. Dr. Carswell is assessed one (1) Class A civil penalty in the amount of one thousand dollars (\$1,000.00), to be paid within thirty (30) days from the effective date of the Order. He must pay court costs including investigatory, administrative, and reporting costs, to be paid within thirty (30) days of the receipt of the Notice of Costs. Dr. Carswell must personally appear before the Tennessee Board of Medical Examiners to petition the Board to lift the probation of his license to practice medicine. At that time, Dr. Carswell must show that all conditions placed on his Tennessee medical license have been maintained throughout the probationary period. Dr. Engelhardt made a motion to accept the Agreed Order. Ms. Johnson seconded the motion. The motion carried.

Letter of Reprimand

Ransom Williams, MDX-Mr. Stephens handed out the Letter of Reprimand to the panel for review. Mr. Williams practiced as a medical x-ray operator, limited to the chest, following the expiration of his license on March 31, 2003. Ms. Johnson made a motion to accept the Letter of Reprimand. Dr. Engelhardt seconded the motion. The motion carried.

Adjourned at 1:58 p.m.

Magnolia Room:

Panel: Drs. Mutter, Bolton and Eckles

Contested Case Hearing

Paris Bransford, MD- Dr. Bransford was not present, nor represented by legal counsel. Mr. Joseph Schmidt represented the State. The Honorable Phillip Barber, Administrative Law

Judge presided. Mr. Schmidt presented the panel with proof of notification in Houston, Texas at two addresses in which both were returned. Judge Barber found it adequate notification. Mr. Schmidt submitted copies of the amended Notice of Charges, the Texas Complaint and the Texas Agreed Order to the panel for review. Dr. Eckles made a motion to grant default. Dr. Mutter seconded the motion. Mr. Schmidt presented his closing statements. Dr. Bransford committed various acts of unprofessional conduct. Dr. Mutter made a motion to accept the Findings of Fact in the Tennessee proposed Order 3, 4, 5, and 6. Dr. Eckles seconded the motion. The motion carried. Dr. Mutter made a motion to accept the findings of fact and Conclusions of Law. Dr. Eckles seconded the motion. The motion carried. Dr. Mutter moved to accept the civil penalty and costs and permanent revocation of Dr. Bransford's license. Dr. Eckles seconded the motion. The motion carried. Dr. Mutter made a motion to accept the order to protect the health, safety and welfare of the citizens of the State of Tennessee. Dr. Eckles seconded the motion. The motion carried.

David Krasnopolksy, MD-Continued

Agreed Order

Todd Brooks, MD- Dr. Brooks was not present nor represented by legal counsel. Mr. Joseph Schmidt represented the State. Mr. Schmidt submitted the Notice of Charges and Agreed Order to the panel for review. On or about January 10, 2003, the State received a medical malpractice payment report from the National Practitioner Databank indicating that Dr. Brooks had entered into a malpractice settlement agreement. Dr. Brooks failed to notify the Board of the settlement of the malpractice claim. Dr. Mutter made a motion to accept the Agreed Order that reprimands Dr. Brooks's license and requires him to pay the costs associated with the disciplinary action. Dr. Eckles seconded the motion. The motion carried.

John Crabtree, MD- Dr. Crabtree was not present nor represented by legal counsel. Mr. Joseph Schmidt represented the State. Mr. Schmidt handed out the Notice of Charges and the Agreed Order to the panel for review. Dr. Crabtree was in violation of TCA 63-6-214(b)(12)(13) and (16). The Agreed Order states that Dr. Crabtree must surrender his license to practice medicine in the State of Tennessee, commencing with the effective date of the Order. Dr. Crabtree's voluntary surrender of his Tennessee medical license shall be permanent. Dr. Crabtree must surrender his United States Drug Enforcement Administration Uniform Controlled Substances Registration Certificate, commencing with the effective date of the Order and pay a maximum amount of one thousand five hundred dollars (\$1,500) in costs. Dr. Mutter made a motion to accept the Agreed Order. Dr. Eckles seconded the motion. The motion carried.

March 17, 2004

Cumberland Room:

Panel: Drs. White, Mutter and Eckles

Contested Case Hearing

Halbert Dodd, MD- Dr. Dodd was present and represented himself. Mr. Harry Weddle represented the State. The Honorable Margaret Robinson, Administrative Law Judge presided. Dr. Eckles informed the panel that he had known Dr. Dodd thirty-one years ago from medical school, but had not had any contact since then and did not feel he needed to recuse himself. Dr. Larry Arnold, Medical Board Consultant and Dr. Dodd were sworn in as witnesses. Mr. Weddle handed out the Notice of Charges of the 2003 and the 2004 Orders to the panel for review. Opening statements were given. Mr. Weddle stated Dr. Dodd was in violation of the 2003 Order. In 2003, Dr. Dodd was placed on suspension at which time he continued to practice. In Dr. Dodd's opening statement he expressed that he was not practicing but trying to handle patient records. Mr. Weddle handed out Affidavits for the panel to review. Dr. Arnold took the stand and stated Dr. Dodd was giving a medical opinion which constitutes the practice of medicine. After further discussions, the panel asked several questions of Dr. Dodd. Mr. Weddle submitted a brief summation reviewing the case. Judge Robinson read the Notice of Charges and turned the hearing over to the Chair for deliberations. Dr. Mutter made a motion to accept #11 of the Finding of Facts. Dr. Eckles seconded the motion. Dr. Mutter made a motion to accept #12 of the Finding of Facts. Dr. Eckles seconded the motion. Dr. Mutter made a motion to accept #1-10 of the Finding of Facts. Dr. Eckles seconded the motion. The Chair voted and the motion carried unopposed. Dr. Mutter made a motion to accept #13 of the Cause of Action. Dr. Eckles seconded the motion. The motion carried. Dr. Mutter made a motion to revoke Dr. Dodd's medical license for one (1) year with stipulations that he keeps in compliance with the Tennessee Medical Foundation's advocacy and their previous behavioral recommendations, previous Agreed Orders and learn recordkeeping. Dr. Eckles seconded the motion. The motion carried. Dr. White made a motion to access cost of hearing to Dr. Dodd. Dr. Mutter seconded the motion. The motion carried.

Order Modification

Halbert Dodd, MD- Dr. Dodd presented evidence showing compliance with the Tennessee Medical Foundation was met from the 2001 Order. Dr. Dodd stated that Dr. Gray and TMF does not advocate for anyone without a drug problem. Dr. Mutter presented several questions to Dr. Dodd pertaining to compliance. Mr. Weddle asked Dr. Dodd if he had a proctor who would send in quarterly reports to the Board which was previously required in the Board Order. Dr. Dodd stated Robert Scanner was his Community Mentor. Mr. Weddle asked for proof showing ongoing sessions with a counselor. After further questions, both parties gave their closing arguments. Mr. Weddle expressed that the Board needed to vote yes to remove the suspension or vote no to leave the suspension in place. Dr. Mutter made a motion that TMF advocacy from the 2001 Order was not obtained. Dr. Eckles seconded the motion. The motion carried. Dr. Mutter made a motion stating that Dr. Dodd did not identify a proctor to make quarterly reports. Dr. Eckles seconded the motion. Dr. Mutter made a motion that Dr. Dodd was still in violation of Finding of Facts #4 by continuing to carry a firearm. Dr. Eckles seconded the motion. Dr. Mutter made a motion that Dr. Dodd was still in violation of Finding of Facts #5. Dr. Eckles seconded the motion. Dr. Eckles made a motion for Dr. Dodd to bring a statement from a psychiatrist stating counseling is not necessary. Dr. Mutter seconded the motion. Dr. Eckles made a motion on the Conclusions of Law and to carry the continuation of the previous Order out and that the request for Order Modification was denied. Dr. Mutter seconded the motion. The motion carried unopposed. Dr. Mutter made a motion to assess costs of hearing without civil penalties be placed on Dr. Dodd. Dr. Eckles seconded the motion. The motion carried unopposed. Dr. White made a motion to

accept the order to protect the health, safety and welfare of the citizens of the State of Tennessee. Dr. Mutter seconded the motion. The motion carried unopposed.

Adjourned at 3:00 p.m.

Dr. Allen S. Edmonson, Secretary

Date

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